IRRIGATION BRANCH

The 21st August, 1970

No. 4396/FCD.—Whereas it appears to the Governor of Haryana that land is likely to be required to be taken by Government at public expense, for a public purpose, namely for proposed Rabrah Drain from R. D. 0 to R. D. 13,000 in villages Puthi and Rabrah in tehsil Gohana, district Rohtak it is hereby notified that land in the locality described below is likely to be required for the above purpose.

This notfication is made under the provision of Section 4 of the Land Acquisition Act, 1894 to all whom it may concern.

In exercise of the powers conferred by the aforesaid section, the Governor of the Haryana is pleased to authorise the Officers for the time being engaged in the undertaking with their servants and workmen to enter upon and survey any land in the locality and do all other acts required or permitted by that section.

Further in exercise of the powers under the said act the Governor of Haryana is pleased to direct that action under section 17(2)(b) of the aforesaid act shall be taken in this case on the grounds of urgency and provision of section 5(a) *ibid* will not apply in regard to the acquisition of this land.

SPECIFICATION

District	Tehsil	Village	Area in acres	Description	Direction of land
Rohtak	Gohana	Puthi	11.25	Partly Chahi Nehri and Barani	A strip of land 13,000 feet in length and varying in widths laying partly in the direction from North to South and partly from East to West as shown on the index plan and as demarcated at site.
Do	Do	Rabrah	0.25		
	Total	..	11.50		

By order of the Governor of Haryana,
K. S. PATHAK,
Chief Engineer (Projects),
Irrigation Works, Haryana,
Chandigarh.

LABOUR DEPARTMENT

The 19th/27th August, 1970

No. 7084-I-Lab-70/21437.—In pursuance of the provisions of section 17 of the Industrial Dispute Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Haryana, Faridabad in respect of the dispute between the workmen and the management of M/s. Dalmia Dadri, Cement Ltd., Charkhi Dadri

BEFORE SHRI P. N. THUKRAL, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA, FARIDABAD

Reference No. 26 of 1970

between

The management of M/s. Dalmia Dadri Cement Ltd., Charkhi Dadri, and their workmen.

Present :—

Shri Sagar Ram Gupta, for the workmen.

Shri Rameshwar Dayal and Shri V. Kaushik, for the management.

INTERIM AWARD

The management of M/s Dalmia Dadri Cement Ltd; Charkhi Dadri have given bonus to their workmen for the year 1967 at the rate of 4 per cent. According to the workmen they are entitled to bonus at rate the of 20 per cent. The workmen claim that they are in addition to production bonus. These demands were not accepted by the management und this gave rise to an industrial dispute. Accordingly the Governor of Haryana in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, referred the following dispute to this Tribunal for adjudication,—*vide* Haryana Government Notification No. ID/4137, dated 13th February, 1970.

1. Whether the workers are entitled to production bonus for the year 1967? If so; with what details and from which date ?

2. Whether the workers are entitled to the bonus at the rate higher than 4 per cent minimum already paid to them for the year 1967? If so; with what details and from which date?

On receipt of the reference usual notices were issued to the parties in response to which a statement of claim was filed on behalf of the workmen and the management filed their written statement. A preliminary objection has been taken on behalf of the management that the claim of the workmen for production bonus in addition to the bonus under the payment of bonus Act, is not permissible. Accordingly the following preliminary issue was framed.

"Whether the claim of the workmen for being given Production Bonus in addition to the bonus under the payment of Bonus Act, is not tenable in law?"

I agree with the submissions of the learned representative of the management that the payment of Bonus Act, is an exhaustive piece of legislation and after the enforcement of this Act, the workmen employed in a establishment to which this Act applies are only entitled to bonus as prescribed under this Act and they are not entitled to any other bonus like incentive bonus, production bonus, attendance bonus, puja bonus or customary bonus in addition to the bonus as prescribed under the Act. Section 17 of the Act lays down that were in any accounting year an employer has paid any puja bonus or other customary bonus to an employee, the employer shall be entitled to deduct the amount of the bonus so paid from the amount of bonus payable by him to the employee under the Act in respect of that accounting year and the employee shall be entitled to receive only the balance. As regard bonus linked with production sub-clause (a) of clause (vii) of section 32 of the payment of Bonus Act lays down nothing in this Act shall apply to "employees who have entered before the 29th May, 1965 into any agreement or settlement with their employers for payment of an annual bonus linked with production or productivity in lieu of bonus based on profits". Sub-clause (b) of clause (vii) also excludes those employees from the purview of the Act who have entered or may enter after the aforesaid date into any agreement or settlement with their employersfor payment of such annual bonus if in lieu of the bonus payable under the Act. such employees are excluded from the purview of the Act only for the period the agreement or settlement is in operation.

From the perusal of the various provisions of the payment of Bonus Act it is thus clear that the workmen can not get bonus under the payment of Bonus Act and also continue getting customary or puja or even bonus linked with productivity. The payment of Bonus Act is an exhaustive piece of legislation and it has made a radical change in the concept of bonus and the employees who are entitled to get the same. It is now no longer a profit bonus because the minimum of 4% bonus has to be paid even if there is a loss. Secondly certain classes of employess as detailed in section 32 of the payment of Bonus Act have been denied the benefit of bonus altogether.

The view that the payment of bonus Act is a comprehensive piece of legislation is fully supported by the Supreme Court authority reported in 1969-I-LLJ-719 given in the case of Sanghvi Jeevraj-Chewar Chand and others V/S Madras Chillies, Grains and Kirana Merchants Workers Union. The question for determination before their Lordships of the Supreme Court in the authority cited above was whether in view of the non applicability of the payment of Bonus Act to establishments not being factories and which employ less than twenty persons, the employees could claim bonus debars Act. It was contended before the Supreme Court that :—

(1) The Act applies only to certain establishments and its preamable and section 1 (3) shows to which of them it is expressly made applicable.

(2) Under section 1(3) the Act is made applicable to all factories and establishments in which twenty or more persons are employed except those "otherwise provided in the Act."

According to the learned Advocate who appeared on behalf of the workmen it meant that the Act does not apply.—

(i) to factories and establishments otherwise provided in the Act, and

(ii) to establishments which have less than twenty persons employed ; the Act, therefore, is not a comprehensive Act but applies only to factories and establishments covered by section 1(3).

(3) There is no categorical provision in the Act depriving the employees of factories and establishments not covered by or otherwise saved in the Act of bonus which they would be entitled to under any other law.

(4) That being so, the employes of establishments to which the Act is not made applicable would still be entitled to bonus under a law other than the Act although they are not entitled to the benefit of the Act.

(5) Parliament was aware of the fact that employees in establishments other than those to which the Act applies were getting bonus under adjudication provided by the Industrial Dispute Act and other similar Acts. If it intended to deprive them of such bonus, surely it would have expressed so in the Act.

(6) Section 39 in clear terms, saves the right to claim bonus under the Industrial Disputes Act or any corresponding law by providing that the provisions of this Act shall be in addition to and not in derogation of the provisions of those Acts.

Negativing these contentions their Sordships of the Supreme Court were pleased to observe as der :—

"It it true that the preamble states that the Act is to provide for payment of bonus to person employed in certain establishments and Section 1(3) provides that the Act is to apply save as otherwise provided therein, to factories and every other establishment in which twenty or more persons are employed. Sub section (4) of section 1 also provides that the Act is to have effect in relation to such factories and establishments from the accounting year commencing on any day in 1964 and every subsequent accounting year. But these provisions do not, for that reason, necessarily mean that the Act was not intended to be a comprehensives and exhaustive law dealing with the entire subject of bonus and the persons to whom it should apply. Even where an Act deals comprehensively with a particular subject matter, the legislature can surely provide that it shall apply to particular persons or groups of persons or to specified institutions only. Therefore the fact that the preamble states that the Act shall apply to certain establishments does not necessarily mean that it was not intended to be a comprehensive provision dealing with the subject matter of bonus. While dealing with the subject matter of bonus the legislature can lay down as a matter of policy that it will exclude from its application certain types of establishments and also provide for exemption of certain other types from the scope of the Act. The exclusion of establishments where less than twenty persons are employed in Section 1(3), therefore, is not a criterion suggesting that parliament has not dealt with the subject matter of bonus comprehensively in the Act."

As already seen, there was until the enactment of this Act no statute under which payment of bonus was statutory obligation on the part of an employer or a statutory right, therefore of an employees. Under the Industrial Disputes Act and other corresponding Acts, workman or industrial establishments as defined therein could raise an industrial dispute and demand by way of bonus a proportionate share in profits and industrial tribunal could under those Acts adiudicate such disputes and oblige the employers to pay bonus on the principle that both capital and labour had contributed to the making of the profits and therefore, both were entitled to a share therein. The right to the payment of bonus and the obligation to pay it arose on principles of equity and fairness in settling such disputes under the machinery provided by the Industrial Acts and not as a statutory right and liability as provided for the first time by the present Act. In providing such statutory liability parliament has laid down a statutory formula on which bonus would be calculated irrespective of whether the establishment in question has during a particular accounting year made profit or not. It can further lay down that the formula it has evolved and the statutory liability it provides in the Act shall apply only to certain establishments and not to all since there was no such statutory obligation under any previous Act, there would not be any question of Parliament having to delete either such obligation or right. In such circumstances, since Parliament in providing for such a right and obligation for the first time there would be no question also of its having to insert in the Act an express provision of the exclusion. In other words, it has not to provide by express words that hanceforth no bonus shall be payable under the Industrial Disputes Act or other corresponding Act as those Acts did not confer any statutory right to bonus.

As regards public sector undertakings it would appear that the exemption is enacted with a deliberate object. Viz; not to subject such establishments to the burden of bonus which are conducted without any profit motive and are run for public benefit. It is clear that in public sector undertakings, the Parliament had a definite policy in mind. This policy becomes all the more discernible when the various other categories of establishments exempted from the Act by Section 32 are examined.

The construction suggested in regard to section 39 is failacious on two grounds. Firstly, because it assumes wrongly that the Industrial Disputes Act or any other law corresponding to it provided for a statutory right to payment of bonus. All that those Acts provided for apart from rights in respect of lay off, lockout, retrenchment, etc., a machinery for investigation and settlement of disputes arising between workmen and their employers. It is, therefore, incorrect to say that the right to bonus under this Act is in addition to and not in derogation of any right to bonus under those Acts. Secondly Section 39 becomes necessary because the Act does not provide any machinery or procedure for investigation and settlement of disputes which may arise between employers and employees, in the absence of any such provision Parliament intended that the machinery and procedure under those Acts should be made available for the adjudication of disputes arising under or in the operation of the Act. Considering the history of the legislation, the back ground and the circumstances in which the Act was enacted, the object of the Act and the scheme, it is not possible to accept the construction suggested on behalf of the respondents that the Act is not an exhaustive Act dealing comprehensively with the subject matter of bonus in all its aspects or that Parliament still left it open to those to whom the Act does not apply by reason of its provision either as to exclusion or exception to raise a dispute with regard to bonus through Industrial adjudication under the Industrial Disputes Act, on other corresponding law.

The learned representative of the management has also relied upon a Division Bench Authority of the Patna High Court reported in A. I. R. 1969, Patna 340. In this case the workmen of Newspaper and Publications (P) Ltd; Patna claimed contractual bonus as a condition of their service as well as statutory bonus under the payment of Bonus Act on the ground that the payment of contractual bonus was unrelated to the fluctuating profits of the company and the decision of the company to pay bonus under the payment of Bonus Act only amounted to a breach of the workmen's implied service condition. It was specifically pleaded on behalf of the workmen that they were entitled to their contractual bonus which they have been receiving as well as their share under the payment of Bonus Act. Negating this claim their Lordship of the Patna High Court up held the plea of the management that the workmen were entitled to bonus only in accordance with the provisions of the payment of Bonus Act and the management of the company had made provision for payment on the basis of allocable surplus for the accounting year. Relying upon the Supreme Court authority reported in 1969-LLJ-709 their Lordship of the Patna High Court held that "It is hardly possible to hold that bonus can now be awarded as part of service condition iguoring the payment of Bonus Act altogether and if any bonus had been paid before 29th May, 1965 on an implied or express agreement as part of service condition irrespective of trading results the workmen can still claim it on the same basis for the year 1964-65. It was held that section 10 of the Payment of Bonus Act now governs payment of minimum bonus whether there are any profits or not and the scope of the Payment of Bonus Act is further cleared by section 17 under which Puja Bonus or other customary bonus can be deducted from the amount of bonus payable under the Act.

The authority of the Patna High Court fully applies to the present case because the workmen in the present case have also claimed production bonus on the ground that there are various agreements, settlements and awards between the parties relating to the production bonus in the past which from their point of view clearly establish that payment of production bonus has become a condition of service of the workmen in the respondent concern and according to their condition of service they are now entitled to get production bonus for the year 1967. It is pleaded para 2 of the claim statement that the production bonus scheme was introduced in the respondent company in the year 1948 which was agreed upon between the workmen and the management of the company for the better production and according to that scheme the workmen were assured of the payment of prodution bonus. It is alleged that this scheme has not been withdrawn so far and so the workmen are entitled to get production according to the scheme and that the management has in fact been giving production bonus to the workmen upto the year 1963 and disputes regarding production bonus for the year 1964 and 1965 are pending in the Tribunal.

The learned representative of the workmen in reply has submitted that the authorities relied upon by the learned representative of the management are not applicable because strictly speaking the production bonus is not a bonus in the strict sense of the term and in reality it is an incentive wage and can be paid as a part of wages. In support of this submission reliance has been placed upon the Supreme Court Authority given in Titaghur Paper Mills Company Ltd. case and reported in 1959-II-LLJ-page 9. While discussing the nature of production bonus the Lordship of the Supreme Court have been pleased to observe as under:—

> "We should like to consider what production bonus essentially is. The payment of production bonus depends upon production and is in addition to wages. In effect, it is an incentive to higher production and is in the nature of an incentive wage. There are various plans prevalent in other countries for this purpose knows as incentive wage plans worked out on various bases, for example, Halsey Premium Plan, *Bedaux* Point Premium Plan, Haynes Manit System and Emerson Efficiency Bonus Plan (see Labour Law by Smith Second Edition, P. 723). The simplest of such Plans is the straight piece rate plan where

payment is made according to each piece product, subject in some cases to a guaranteed minimum wage for so many hours work. But the straight piece rate system can not work where the finished product is the result of co-operative effort of a large number of workers each doing a shall part which contributes to the result. In such cases production bonus by tonnage produced, as in this case is given. There is a base or standard above which extra payment is made for extra production in addition to the basic wage. Such a plan typically guarantees time wage up to the time represented by standard performance and gives workers a share in the savings represented by superior performadce. But whatever may be the nature of the plan, the payment in effect is an extra emplument for extra effort put in by workmen over the standard that may be fixed. That is the reason why all these plans are knows as incentive wage plans and generally speeking have little to do with profits. The extra payment depends not on extra profits but on extra production, The extra payment ealcutated on the basis of extra production is in a case like the present where the payment is made after the annual production is known, In the nature of empoyment paid at the end of the year Therefore, generally speaking, payment of production bonus is nothing more not less than a payment of further emoluments depending upon production as an incentive to the workmen to put in more than the standard performance Production bonus In this case also Is of this nature and is nothing more than additional emolument paid as an incentive for higher propuction We shall later consider the arguments whether in this case the production in bonus is anything other than profit bonus It is enough to say at this stage that the bonus under the scheme in this case also depends essentially on production and therefore is in the nature of incentive wage."

In the authority cited above their Lordships of the Supreme Court have brought out the essential characteristics of production bonus and the manner in which it is to be distinguished from profit bonus but after the passing of the Payment of Bonus Act the position is now changed because their Lordships of the Supreme Court in 1969-I-LLJ-719 have been pleased to hold that the Payment of Bonus Act is not limited to profit bonus only and it is an exhaustive and comprehensive piece of legislation and bonus of any type can now be awarded independantly of the Act. Hence after carefully con-

submissions of the learned repre entative of the parties I find this issue in favour of the manage:ment, and hold that workmen are not entitled to production bonus for the year 1967 in addition to bonus under the Payment of Bonus Act.

P. N. THUKRAL,

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Dated : 3rd August, 1970.

No. 1183, dated the 6th August, 1970,

Forwarded (four copies) to the Secretary o Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industria Disputes Act, 1947.

P. N. THUKRAL,

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Dated : 3rd August, 1970.

B. L. AHUJA,

Commissioner for Labour & Employment and, Secy.

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